

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 254 of 1997

in

SPECIAL CIVIL APPLICATION No 2063 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No.

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2. To be referred to the Reporter or not? No.

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No

MOHMAD HUSSEN ISA

Versus

M.M.E.W. HIGH SCHOOL

Appearance:

MR SURESH M SHAH for Petitioner

MR HJ NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 02/07/97

ORAL JUDGEMENT(Per: Thakker J)

This appeal is preferred against an order passed by the learned single Judge summarily dismissing the Special Civil Application No.. 2063 of 1997 on March 11,1997. The petition was dismissed only on the ground that it is not maintainable at law in the light of the decision reported in Miss Raj Soni vs. Air Officer in charge Administration & anor .AIR 1990 SC 1305.

2. We have heard Mr. S.M.Shah learned counsel for the appellant. He submitted that there is an error apparent on the face of the record committed by the learned single Judge in holding that the petition was not maintainable . Without entering into larger question, we issued notice since an assertion was made that though English is one of the compulsory subjects at standards 8th,9th and 10th and in spite of the fact thatthere are a number of students and comparatively the school in question is a big school, English was not taught in standards 8th,9th and 10th . In pursuance to the notice issued by this court, the respondent appeared and one Rabia A. Arab has filed affidavit on behalf of the respondent no.1. Mr. H.J.Nanavati learned counsel for the respondents stated that the deponent is the principal of the school. In para 6 of the affidavit, it is stated:

" I say that myself is teacher of English and one another gentleman viz. Harun Jethwa is also working as English Teacher in the school. I teach English to students of X standard, whereas Shri Jethwa teaches English subject to students of VII and IX standards."

Looking to the above assertion it is clear that the case of the respondent school is that English is being taught and over and above the Principal of the school, one Harun Jethwa is also English teacher in the said school.

2. It is no doubt contended that Harun Jethwa is not a regular teacher but he serves in primary section. It is also submitted that though selection was made for the post of English Teacher, no appointment has been made. In our opinion, it would not be proper to allow this question to be raised at the stage of Letters Patent Appeal. The court has to be satisfied as to whether English, which is one of the compulsory subjects is or is not being taught at standards 8th,9th and 10th . In view of the statement by Mr. Nanavati and affidavit of the Principal of the school, it cannot be said that subject of English is not taught. Again, it is not mentioned in the petition that the students had suffered in English. In view of this, we do not see any infirmity in the order passed by the learned single Judge. On merits also we

are satisfied that no interference is called for by this Court in exercise of extraordinary jurisdiction.

3. If regular appointment is not made, it is open to the appellant to take appropriate proceedings in accordance with law , if it is otherwise permissible for him to do so. Notice discharged. No costs.

(C.K.Thakker.J)

(S.D.Pandit.J)